

1 John B. Richards, State Bar No. 175882  
2 Law Offices of John B. Richards  
3 137 E. Anapamu Street  
Santa Barbara, CA 93101  
Telephone: (805) 683-2736

E | Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DE SOL CORP., INC., a California corporation,

CASE NO. C 07-4107

**DECLARATION OF BART M.  
BOTTA IN SUPPORT OF  
DEFENDANTS' MOTION TO  
TRANSFER CASE FOR IMPROPER  
VENUE**

VEGAS CONNECTION, INC., a California corporation; OMAR AWAD, an individual; JAHANGIR SHAHRIARI, an individual,

## Defendants.

I, BART M. BOTTA, declare as follows:

1. I am a partner with the law firm of Rynn & Janowsky, LLP, attorneys of record for the Defendants in a pending case related to the above-captioned case, which is entitled *ROBERTO I. ALVARO, an individual, vs. REY REY PRODUCE SFO, INC., a California Corporation; REY & REY PRODUCE, INC., a California corporation; MANUEL REYNOSO, an individual*, Case Number C-07-01685-JSW (hereinafter referred to as "the Rey & Rey Case").

2. I have personal knowledge of all matters stated in this declaration and if called as a witness, I would and could competently testify thereto. I have practiced as a

1 California attorney specializing in matters under the federal Perishable Agricultural  
2 Commodities Act (“PACA”) [7 U.S.C. §499e *et seq.*] for the past fourteen (14) years.

3       3. I make this Declaration to illustrate the similarities between the facts set  
4 forth by the Plaintiff in the Rey & Rey Case and the facts set forth in the above-captioned  
5 case, and to show that the same fraudulent course of conduct was employed by the  
6 Plaintiffs in both cases (which are essentially the same party). Consequently, while there  
7 is a motion to dismiss the Rey & Rey case in its entirety currently pending and awaiting  
8 the issuance of a decision, if that case is not dismissed, the two cases should be  
9 consolidated as they are certainly related cases. *See* Defendants’ Motion to Transfer for  
10 Improper Venue and the Declarations filed in support thereof.

11       4. Rey & Rey’s primary office is located in Los Angeles, and since the above-  
12 captioned case should be transferred to Los Angeles for all of the reasons set forth in  
13 Defendants’ Motion to Transfer for Improper Venue and the Declarations filed in support  
14 thereof, if the Court in the Rey & Rey Case does not dismiss that case in its entirety, the  
15 interests of judicial economy would be best served by consolidating both cases in the  
16 U.S. District Court in Los Angeles, where Defendants in the above-captioned case are  
17 seeking to have venue transferred by their motion.

18       5. The Plaintiff in the Rey & Rey Case is Roberto I. Alvaro, and he is  
19 currently listed on the PACA license as the sole principal for De Sol Corp., which is the  
20 Plaintiff in the above-captioned case. Mr. Alvaro initially filed complaints against Rey &  
21 Rey and Rey Rey Produce SFO, Inc. with the PACA Branch of the U.S. Department of  
22 Agriculture (PACA Case Files W-07-115 and W-07-114). These cases are still pending.  
23 In the PACA cases, I prepared responses to the initial Informal Complaints, which set out  
24 the facts and circumstances of the matter. These responses were January 25, 2007 letters  
25 that I sent to the Tucson PACA Regional Office of the U.S. Department of Agriculture.  
26 True and correct copies of my January 25, 2007 letters are attached hereto and are  
27 incorporated herein by this reference as **Group Exhibit 1**.

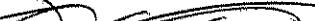
28

6. As is apparent from the facts set forth in Group Exhibit 1, Roberto Alvaro engaged in fraudulent acts and concocted a "scam" whereby he attempted to make money at the expense of Defendants in both this case and the Rey & Rey Case through his self-dealing and unauthorized actions. I have spoken to counsel for the Defendants in the present case on numerous occasions, and have reviewed the Declarations of Defendants that are being filed in support of Defendants' Motion to Transfer, and in my opinion, there is no question that the facts in both matters show a similar course of dealing. Both cases involve the same parties, and parties related to the same parties, and the Plaintiffs in both cases employed the similar course of dealing with the intent to defraud VEGAS CONNECTION, INC. in this case, and Rey & Rey, Inc. and Rey Rey Produce SFO, Inc. in the Rey & Rey Case, out of money, all while the Plaintiffs in both cases breached the fiduciary duties owed to the Defendants.

7. For the foregoing reasons, as counsel for Defendants in the related case number C 07-01685 JSW, I hereby support Defendants' motion to transfer venue to Los Angeles in the present case. If granted, and in the event the Defendants' motion to dismiss case number C 07-01685 JSW in its entirety is not granted, I will file a similar motion to transfer venue and also to consolidate the Rey & Rey case with the above-captioned case as they are obviously related cases that involve the same set of facts and the same and related parties.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 15th day of October 2007 at Newport Beach, California.

  
BART M. BOTTA

Newport Beach Office



4100 Newport Place Drive, Suite 700  
Newport Beach, California 92660  
Telephone 949.752.2911  
Facsimile 949.752.0953  
[www.rjlaw.com](http://www.rjlaw.com)

BART M. BOTTA  
[bart@rjlaw.com](mailto:bart@rjlaw.com)  
Fax: (949) 225-4764

**VIA FACSIMILE & U.S. MAIL**

January 25, 2007

Mr. Jerry W. Taylor  
Regional Director, Western Region  
U.S.D.A., PACA Branch  
300 W. Congress St.  
Federal Building, Box 30  
Tucson, AZ 85701

**Re: Roberto Alvaro dba De Sol Export vs. Rey Rey Produce SFO, Inc.**  
**PACA File No. W-07-114**

Dear Jerry:

As you know, this law firm represents Rey Rey Produce SFO, Inc. ("SFO") in the above-referenced dispute, and this letter is SFO's response to your December 22, 2006 letter concerning the informal complaint filed by Robert Alvaro dba De Sol Export ("Complainant") in the above-captioned matter. (This matter is also related to a second reparation case filed by Complainant against Rey & Rey Produce, Inc. ("R&R") (PACA File No. W-07-115).)

SFO disputes the allegations made by Complainant and denies that any sums are due and owing to Complainant. Before even addressing the erroneous factual contentions asserted by Complainant, there are several procedural and jurisdictional grounds that should result in the dismissal of the present action.

**I. Statute of Limitations Defense**

At the outset, it is to be noted that the informal complaint filed by Complainant in the related case (PACA File No. W-07-115) asserts that commissions are allegedly owed for imported goods sold to both R&R and SFO. Therefore, it is unclear whether Complainant is

Letter to Mr. Jerry W. Taylor  
January 25, 2007  
Page 2

alleging that R&R and SFO owe commissions, or only R&R. If Complainant is alleging that commissions are owed by SFO in this matter, then SFO submits that the nine (9) month statute of limitations for filing a reparation action with the PACA Branch of the U.S.D.A. has run as to these claimed commissions. Therefore, Complainant's Informal Complaint should be dismissed pursuant to the PACA at 7 U.S.C. §499f(a)(1) as the U.S.D.A. lacks jurisdiction. *See also Burnac Produce, Inc. v. Calavo Growers of California*, 47 Agric. Dec. 1624 (1988)(complainant alleged that the respondent, acting as a grower's agent, had failed to remit the proper amount due on numerous transactions, many of which were barred based on the statute of limitations).

## **II. Complainant's Action is Based Upon a Forged Document**

Regardless of whether Complainant is alleging commissions are owed by SFO, the fact is that the Commission Statement that Complainant submitted in support of its cases contains a forged signature of SFO's and R&R's president Manuel Reynoso. Enclosed with this letter as **Exhibit 1** is a true and correct copy of the Commission Statement submitted by Complainant. Also, enclosed as **Group Exhibit 2** are true and correct copies of several documents which actually were signed by R&R's president Manuel Reynoso and were filed in various federal lawsuits in which the undersigned has represented R&R and SFO throughout the last several years (the signatures of Manuel Reynoso are dated from November 8, 2004 through January 5, 2007 (the bank account number on the check has been redacted)). The Commission Statement that Complainant alleges was signed by Manuel Reynoso is dated November 9, 2006, and as is abundantly clear from a quick comparison of the signatures, the signature on Complainant's Commission Statement does not match Manuel Reynoso's actual signature. Affidavits of individuals with personal knowledge of the facts surrounding Complainant's forgery of this document are also in the process of being prepared and will be submitted as even further evidence should Complainant decide to pursue its action by a Formal PACA reparation Complaint.

Therefore, it is clear that Complainant has falsified the document which it submitted to the U.S.D.A. to support its claims against R&R and SFO by forging Manuel Reynoso's signature, which is a federal crime under 18 U.S.C. § 495, which provides for punishment of up to 10 years in prison, as well as under 7 U.S.C. § 499b(4), which provides that it is unlawful to make any "false or misleading statement" in connection with any transaction involving perishable agricultural commodities.

Furthermore, it is also possible, that some or all of the previous documents submitted by Complainant were similarly falsified, and consequently, Complainant has "unclean hands" to maintain any action whatsoever against either SFO or R&R. Therefore, SFO further prays that based on the evidence submitted that Complainant altered evidence, the Secretary make such other and further orders and take such disciplinary action against Complainant as is contemplated by Section 8 of the PACA as deemed proper under the circumstances involved in this matter.

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January 25, 2007  
Page 3

### **III. Complainant Also Did Not Send Any Invoices to SFO**

Factually, Complainant's claim must fail also. Complainant alleges that SFO is obligated to pay it for produce, and asserts that \$110,819.00 is due. However, Complainant never sent any invoices to SFO, and there was no meeting of the minds regarding prices that Complainant alleges SFO agreed to pay. Furthermore, SFO paid in full for all produce, and these amounts were accepted by Complainant and there is nothing further due. More importantly, Complainant Roberto Alvaro, who was allegedly doing business as De Sol Export, was also employed by SFO. In essence, Mr. Alvaro alleged to have sold produce to SFO by making the purchases himself (on behalf of SFO), and thereby binding SFO. However, since De Sol Export is a dba of Roberto Alvaro, Mr. Alvaro was simply selling produce to himself and in doing so attempting to make SFO bound by these purchases. Clearly, Mr. Alvaro would not care how high the prices were that he (on behalf of SFO) was paying for produce from Complainant, when Complainant was Mr. Alvaro himself.

In fact, evidence exists and is currently being compiled and organized that Complainant was buying produce (from himself) at prices that were higher than those prices that Complainant was reselling the produce for to customers of SFO. Thus, Mr. Alvaro was continually buying produce for SFO from his own company (De Sol Export) at prices that were over the market price and reselling to customers of SFO at lower prices for great financial losses (but Mr. Alvaro did not care since he was personally profiting when he purchased the produce from his own company). This sort of self-dealing and unscrupulous business practices is not only the type that the PACA was originally enacted to prevent, but it is also illegal. *See also, e.g., E.J. Harrison & Son v. A.E. Albert & Sons, Inc.*, 24 Agric. Dec. 884 (1965)(for a party to be liable it must have a contractual relationship involving the purchase and sale of produce); *Reid & Joyce Packing Co. v. G.W. Touchstone*, 15 Agric. Dec. 884 (1956); *Anonymous*, 4 Agric. Dec. 332 (1945); *George W. Haxton & Son, Inc. v. Adler Egg Co.*, 19 Agric. Dec. 218 (1960).

### **IV. Complainant has no PACA License**

Finally, Complainant's business address is listed as being in Mexico, but in the informal complaint, the Complainant is listed as being located in San Mateo, California. It appears that Complainant did not have a valid PACA license during any of the relevant times in this matter, and may therefore have been operating without a license in violation of the PACA. *See also Jebavy-Sorenson v. Lynn Foods*, 32 Agric. Dec. 529 (1973); *Warren Fair Brothers v. Gulf Farms*, 28 Agric. Dec. 612 (1969). Complainant appears to have obtained a PACA license on December 18, 2006 (License No. 20070258), but this date was after Complainant's alleged transactions.

Based on Complainant's self-dealing and fraudulent and unlawful actions, the fact that SFO (and R&R) have fully paid for all produce, the fact that Complainant did not hold a valid PACA license, and the fact there was no contractual privity between Complainant and SFO (or R&R), Complainant cannot be permitted to maintain this action. For the foregoing reasons and

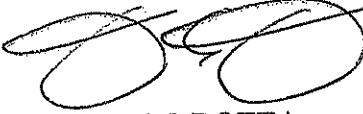
Letter to Mr. Jerry W. Taylor  
January 25, 2007  
Page 4

authorities, SFO respectfully requests that this matter be dismissed and that no further action be taken against SFO (or R&R in the related case).

Thank you for your attention to this matter. Please feel free to contact me with any further questions or comments.

Very truly yours,

RYNN & JANOWSKY, LLP



BART M. BOTTA

/BMB  
07-103/Answer to Informal Complaint

cc: Client



11/9/2006

## COMMISSION STATEMENT

As per our verbal agreement Dated August 2005, Rey Rey Los Angeles, Inc should pay weekly \$5000.00 for comission to Desol Imports or Ivan Alvarez for Imports goods (mexican specialities and mexican persian limes) to Rey Rey Los Angeles and Rey Rey San Francisco.

1	Weekly	August	2005	01-06	5,000.00
2		August	2005	08-13	5,000.00
3		August	2005	15-20	5,000.00
4		August	2005	22-27	5,000.00
5		August	2005	29-03	5,000.00
6		September	2005	06-10	5,000.00
7		September	2005	12-17	5,000.00
8		September	2005	19-24	5,000.00
9		September	2005	26-01	5,000.00
10		October	2005	03-08	5,000.00
11		October	2005	10-15	5,000.00
12		October	2005	17-22	5,000.00
13		October	2005	24-29	5,000.00
14		November	2005	31-05	5,000.00
15		November	2005	07-12	5,000.00
16		November	2005	14-19	5,000.00
17		November	2005	21-26	5,000.00
18		November	2005	28-03	5,000.00
19		December	2005	05-10	5,000.00
20		December	2005	12-17	5,000.00
21		December	2005	19-24	5,000.00
22		December	2005	26-31	5,000.00
23		January	2006	02-07	5,000.00
24		January	2006	09-14	5,000.00
25		January	2006	16-21	5,000.00
26		January	2006	23-28	5,000.00
27		February	2006	30-04	5,000.00
28		February	2006	06-11	5,000.00
29		February	2006	13-18	5,000.00
30		February	2006	20-25	5,000.00
31		March	2006	27-04	6,000.00
32		March	2006	06-11	5,000.00
33		March	2006	13-18	5,000.00
34		March	2006	20-25	5,000.00
35		March	2006	27-01	5,000.00
36		April	2006	03-08	5,000.00

## EXHIBIT I

37	April	2006	10-15	5,000.00
38	April	2006	17-22	5,000.00
39	April	2006	27-29	5,000.00
40	May	2006	01-06	5,000.00
41	May	2006	08-13	5,000.00
42	May	2006	15-20	5,000.00
43	May	2006	22-27	5,000.00
44	May	2006	29-03	5,000.00
45	June	2006	05-10	5,000.00
46	June	2006	12-17	5,000.00
47	June	2006	19-24	5,000.00
48	June	2006	26-01	5,000.00
49	July	2006	03-08	5,000.00
50	July	2006	10-15	5,000.00
51	July	2006	17-22	5,000.00
52	July	2006	24-29	5,000.00
53	August	2006	31-05	5,000.00
54	August	2006	07-12	5,000.00
55	August	2006	14-19	5,000.00
56	August	2006	21-26	5,000.00
57	August	2006	28-02	5,000.00
58	September	2006	04-09	5,000.00
59	September	2006	11-16	5,000.00
60	September	2006	18-23	5,000.00
61	September	2006	25-30	5,000.00
62	October	2006	02-07	5,000.00
63	October	2006	09-14	5,000.00
64	October	2006	16-21	5,000.00
65	October	2006	23-28	5,000.00
66	November	2006	30-04	5,000.00
67	November	2006	06-11	5,000.00
68	November	2006	13-18	5,000.00
69	November	2006	20-25	5,000.00
70	November	2006	27-02	5,000.00
71	December	2006	04-09	5,000.00
72	December	2006	11-16	5,000.00
73	December	2006	18-23	5,000.00
74	December	2006	25-30	5,000.00

*Manuel Reynoso*  
Manuel Reynoso C.E.O.  
ReY Rey Inc.

Nov. 16, 2004 5:30PM  
Nov. 16, 2004 10:07 10:11PM  
Nov. 5, 2004 2:58PM

Mar. 1 I. Reynoso

No. 4600 P. 2  
213 1425 P. 1  
No. 4489 P. 7

19. Plaintiff shall, upon full payment of all sums due under this  
Agreement and Stipulation, provide Defendants with a conformed copy of the  
request for dismissal of this action, in its entirety, with prejudice.

IT IS SO STIPULATED:

G. W. PALMER & CO., INC.

DATED: 11/16/04 By: Lindall Woodward

Name: Lindall Woodward  
Position: Produce Sales

REY & REY PRODUCE, INC.

DATED: 11/18/04 By: M.R.

MANUEL REYNOSO, President

MANUEL REYNOSO, Individually

DATED:            By:           

MANUEL REYNOSO

**APPROVED AS TO FORM AND CONTENT:**

RYNN & JANOWSKY, LLP

DATED: 11-18-04 By: B.M.B.

BART M. BOTTA, Attorneys for Plaintiff

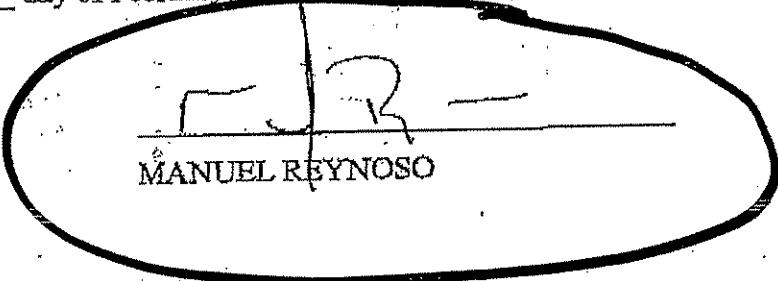
Feb. 1, 2006 4:04PM

No. 8172 P. 6

1        17. For all of these reasons, I believe entry of judgment against Defendant is  
2 both proper and justified.

3        I declare under penalty of perjury under the laws of the State of California, and the  
4 United States of America that the foregoing is true and correct.

5        Executed this 8<sup>th</sup> day of February, 2006 at Los Angeles, California.

  
MANUEL REYNOSO

LAW OFFICES  
RYAN & JANOWSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(949) 752-2800  
FAX (949) 752-0863

Feb. 1, 2006 4:06PM

No. 8172 P. 10

The perishable agricultural commodities listed on this invoice  
are sold subject to the statutory trust authorized by section 5(c)  
of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.  
§499e(c)). The seller of these commodities retains a trust claim  
over these commodities, all inventories of food or other products  
derived from these commodities and any receivables or proceeds  
from the sale of these commodities until full payment is received.

6 See again, true and correct copies of Plaintiff's invoices attached hereto and incorporated  
7 herein by reference as Group Exhibit 1.

8       14. All the invoice amounts due were reviewed and authorized by me. After  
9 the complaint was filed, no payments have been received. Therefore, the principal  
10 amount currently owed by Defendants to Plaintiff is \$8,316.80.

15. Pre-judgment finance charges at the rate of 18% per annum has been calculated on the principal amount due from the date each invoice became due and owing through March 15, 2006 (motion for default judgment hearing) in the amount of \$2,006.80. An itemized spreadsheet calculating the finance charges is attached hereto as

### **Exhibit 3.**

16. Based on the foregoing, I believe Plaintiff is entitled to default judgment  
17 against Defendants in the principal amount of \$8,316.80 plus prejudgment finance  
18 charges in the amount of \$2,006.80 and attorneys fees and costs in the amount of \$866.37  
19 for a total current amount due of \$11,189.97, and post judgment finance charges at the  
20 rate of 18% per annum.

17. For all of these reasons, I believe entry of judgment against Defendants is  
both proper and justified.

23 I declare under penalty of perjury under the laws of the State of California, and the  
24 United States of America that the foregoing is true and correct.

25 Executed this 8<sup>th</sup> day of February, 2006 at Los Angeles, California.

**MANUEL REYNOSO**

Mar. 20, 2006 3:22PM

No. 8697 P. 5

1           The perishable agricultural commodities listed on this invoice  
 2           are sold subject to the statutory trust authorized by section 5(c)  
 3           of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.  
 4           §499e(c)). The seller of these commodities retains a trust claim  
 5           over these commodities, all inventories of food or other products  
              derived from these commodities and any receivables or proceeds  
              from the sale of these commodities until full payment is received.

6           See again, true and correct copies of Plaintiff's invoices attached hereto and incorporated  
 7           herein by reference as Group Exhibit 1.

8           14. All the invoice amounts due were reviewed and authorized by me. After  
 9           the complaint was filed, no payments have been received. Therefore, the principal  
 10          amount currently owed by Defendant to Plaintiff is \$26,042.50.

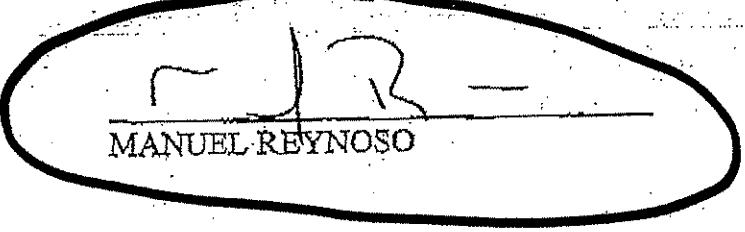
11           15. Pre-judgment finance charges at the rate of 18% per annum has been  
 12          calculated on the principal amount due from the date each invoice became due and owing  
 13          through April 28, 2006 (motion for default judgment hearing) in the amount of  
 14          \$4,487.82. An itemized spreadsheet calculating the finance charges is attached hereto as  
 15          Exhibit 3.

16           16. Based on the foregoing, I believe Plaintiff is entitled to default judgment  
 17          against Defendant in the principal amount of \$26,042.50 plus prejudgment finance  
 18          charges in the amount of \$4,487.82 and attorneys fees and costs in the amount of  
 19          \$2,183.93 for a total current amount due of \$32,714.25, and post judgment finance  
 20          charges at the rate of 18% per annum.

21           17. For all of these reasons; I believe entry of judgment against Defendant is  
 22          both proper and justified.

23           I declare under penalty of perjury under the laws of the State of California, and the  
 24          United States of America that the foregoing is true and correct.

25           Executed this \_\_\_\_ day of March, 2006 at Los Angeles, California.



MANUEL REYNOSO

LAW OFFICES  
 RYNN & JANOWSKY  
 4100 NEWPORT BEACH DRIVE  
 SUITE 1700  
 NEWPORT BEACH, CALIFORNIA 92660-2428  
 949/752-2911  
 FAX (848)752-0483

1       17. For all of these reasons, I believe entry of judgment against Defendant is  
2 both proper and justified.

I declare under penalty of perjury under the laws of the State of California, and the United States of America that the foregoing is true and correct.

5 Executed this \_\_\_\_ day of May, 2006 at Los Angeles, California.

MANUEL REYNOSO

**RYNAN, ZABOWSKY**  
4100 NEWPORT BEACH DRIVE  
SUITE 200  
NEWPORT BEACH, CALIFORNIA 92660-2423  
(714) 753-2311

3474

WELLS FARGO BANK, N.A.

CALIFORNIA

285100

1/15/2007

1/15/07

PRODUCE INC

P.O. BOX 21485 LOS ANGELES CA 900021

(213) 955-8056 (213) 955-8087

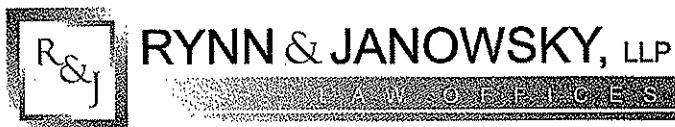
PAY TO THE  
ORDER OF  
RYAN & JANOWSKY LLP

Two Thousand and 00/100

TRYNNE & JANOWSKY LLP  
24100 NEWPORT PEACE DRIVE  
SUITE 700  
NEWPORT BEACH CA 92660

MEMO

100-11111-117



Newport Beach Office

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4100 Newport Place Drive, Suite 700  
Newport Beach, California 92660  
Telephone 949.752.2911  
Facsimile 949.752.0953  
www.rjlaw.com

BART M. BOTTA  
bart@rjlaw.com  
Fax: (949) 225-4764

**VIA FACSIMILE & U.S. MAIL**

January 25, 2007

Mr. Patrick P. Romero  
Acting Regional Director  
U.S.D.A., PACA Branch  
300 W. Congress St.  
Federal Building, Box 30  
Tucson, AZ 85701

**Re: Roberto Alvaro dba De Sol Export vs. Rey & Rey Produce, Inc.  
PACA File No. W-07-115**

Dear Patrick:

As you know, this law firm represents Rey & Rey Produce, Inc. ("R&R") in the above-referenced dispute, and this letter is R&R's response to your January 5, 2007 revised letter concerning the informal complaint filed by Robert Alvaro dba De Sol Export ("Complainant") in the above-captioned matter. (This matter is also related to a second reparation case filed by Complainant against Rey Rey Produce SFO, Inc. (PACA File No. W-07-114).)

R&R disputes the allegations made by Complainant and denies that any sums are due and owing to Complainant. Before even addressing the erroneous factual contentions asserted by Complainant, there are several procedural and jurisdictional grounds that should result in the dismissal of the present action.

**I. Statute of Limitations has Expired**

At the outset, it is to be noted that the informal complaint asserts that the commissions alleged to be due totaling \$165,000 are for an agreement for transactions from August 2005 through December 2006. Complainant filed its informal complaint on or about December 19, 2006. Consequently, the nine (9) month statute of limitations for filing a reparation action with the PACA Branch of the U.S.D.A. has run as to the claimed commissions. Consequently, since

Letter to Mr. Patrick P. Romero  
 January 25, 2007  
 Page 2

the alleged transaction occurring from August 2005 through March 19, 2006 are untimely as a matter of law, Complainant's Informal Complaint must be dismissed pursuant to the PACA at 7 U.S.C. §499f(a)(1). *See also Burnac Produce, Inc. v. Calavo Growers of California*, 47 Agric. Dec. 1624 (1988)(complainant alleged that the respondent, acting as a grower's agent, had failed to remit the proper amount due on numerous transactions, many of which were barred based on the statute of limitations). Thus, the U.S.D.A. lacks jurisdiction over these alleged transactions and of this dispute as a whole.

## **II. Complainant's Action is Based Upon a Forged Document**

Enclosed with this letter as **Exhibit 1** is a true and correct copy of the Commission Statement that Complainant submitted as support for its Informal Complaint against R&R, which Complainant alleges was signed by R&R's president Manuel Reynoso. Also enclosed as **Group Exhibit 2** are true and correct copies of several documents which actually were signed by R&R's president Manuel Reynoso and were filed in various federal lawsuits in which the undersigned has represented R&R throughout the last several years (the signatures of Manuel Reynoso are dated from November 8, 2004 through January 5, 2007 (the bank account number on the check has been redacted)). The Commission Statement that Complainant alleges was signed by Manuel Reynoso is dated November 9, 2006, and as is abundantly clear from a quick comparison of the signatures, the signature on Complainant's Commission Statement does not match Manuel Reynoso's actual signature. Affidavits of individuals with personal knowledge of the facts surrounding Complainant's forgery of this document are also in the process of being prepared and will be submitted as even further evidence should Complainant decide to pursue its action by a Formal PACA reparation Complaint.

Therefore, it is clear that Complainant has falsified the document which it submitted to the U.S.D.A. to support its claim against R&R by forging Manuel Reynoso's signature, which is a federal crime under 18 U.S.C. § 495, which provides for punishment of up to 10 years in prison, as well as under 7 U.S.C. § 499b(4), which provides that it is unlawful to make any "false or misleading statement" in connection with any transaction involving perishable agricultural commodities.

Furthermore, it is also possible, that some or all of the previous documents submitted by Complainant were similarly falsified, and consequently, Complainant has "unclean hands" to maintain any action whatsoever against R&R. Therefore, R&R further prays that based on the evidence submitted that Complainant altered evidence, the Secretary make such other and further orders and take such disciplinary action against Complainant as is contemplated by Section 8 of the PACA as deemed proper under the circumstances involved in this matter.

## **III. Since the Alleged Agreement is Unsigned, It is Unenforceable Against R&R**

Since the alleged agreement submitted by Complainant was never signed by R&R, there simply was no agreement between the parties. *See, e.g., In re J.A. Speight*, 33 Agric.Dec. 280 (1974); *In re Mattes Livestock Co.*, 42 Agric.Dec. 81, 96 (1982); *Burnac Produce, Inc. v. Calavo*

Letter to Mr. Patrick P. Romero

January 25, 2007

Page 3

*Growers of California*, 47 Agric.Dec. 1624 (1988)(negative inferences may be taken when a party fails to provide obviously necessary documents or testimony). Also, case decisions under the PACA have long held that proponents of the terms of a contract have the burden to show that both parties agreed to those terms. *La Casita Farms, Inc. v. Johnson City Produce Co.*, 34 Agric. Dec. 506 (1975).

Furthermore, no meeting of minds occurred regarding the agreement Complainant relies upon to support its claim. Thus, Complainant cannot hold R&R to the terms of an agreement that R&R did not agree to be bound by or execute. Case precedent plainly holds that there must be a meeting of the minds as to the essential terms of an agreement for there to be a contract. See, e.g., *Griffin-Holder Co. v. Joseph Mercurio Produce Corp.*, 40 Agric. Dec. 1002 (1981); *Independent Grayse Distributors v. Barbera Packing Corp.*, 25 Agric. Dec. 1144 (1966); see also, e.g., *W.W. Rodgers & Sons v. California Produce Distributors, Inc.*, 34 Agric. Dec. 914 (1975)(when the parties do not agree on a material term to a contract the contract is not binding).

#### **IV. Complainant Also Did Not Send Any Invoices to R&R**

Factually, Complainant's claim must fail also. Complainant alleges that R&R is obligated to pay it for produce, and asserts that \$399,551.54 is due. However, Complainant never sent invoices to R&R, and there was no meeting of the minds regarding prices that Complainant alleges R&R agreed to pay. Furthermore, R&R paid in full for all produce, and these amounts were accepted by Complainant and there is nothing further due. More importantly, Complainant Roberto Alvaro, who was allegedly doing business as De Sol Export, was also employed by Rey Rey SFO, a related company to R&R, against which Complainant has also filed a frivolous reparation case (PACA File No. W-07-114). In essence, Mr. Alvaro alleged to have sold produce to R&R by making the purchases himself (on behalf of R&R), and thereby binding R&R as well as Rey Rey SFO. However, since De Sol Export is a dba of Roberto Alvaro, Mr. Alvaro was simply selling produce to himself and in doing so attempting to make R&R and Rey Rey SFO bound by these purchases. Clearly, Mr. Alvaro would not care how high the prices were that he (on behalf of R&R and Rey Rey SFO) was paying for produce from Complainant, when Complainant was Mr. Alvaro himself.

In fact, evidence exists and is currently being compiled and organized that Complainant was buying produce (from himself) at prices that were higher than those prices that Complainant was reselling the produce for to customers of R&R and Rey Rey SFO. Thus, Mr. Alvaro was continually buying produce for R&R and Rey Rey SFO from his own company (De Sol Export) at prices that were over the market price and reselling to customers of R&R and Rey Rey SFO at lower prices for great financial losses (but Mr. Alvaro did not care since he was personally profiting when he purchased the produce from his own company). This sort of self-dealing and unscrupulous business practices is not only the type that the PACA was originally enacted to prevent, but it is also illegal. See also, e.g., *E.J. Harrison & Son v. A.E. Albert & Sons, Inc.*, 24 Agric. Dec. 884 (1965)(for a party to be liable it must have a contractual relationship involving the purchase and sale of produce); *Reid & Joyce Packing Co. v. G.W. Touchstone*, 15 Agric.

Letter to Mr. Patrick P. Romero  
January 25, 2007  
Page 4

Dec. 884 (1956); *Anonymous*, 4 Agric. Dec. 332 (1945); *George W. Haxton & Son, Inc. v. Adler Egg Co.*, 19 Agric. Dec. 218 (1960).

**V. Complainant has no PACA License**

Finally, Complainant's business address is listed as being in Mexico, but in the informal complaint, the Complainant is listed as being located in San Mateo, California. It appears that Complainant did not have a valid PACA license during any of the relevant times in this matter, and may therefore have been operating without a license in violation of the PACA. *See also Jebavy-Sorenson v. Lynn Foods*, 32 Agric. Dec. 529 (1973); *Warren Fair Brothers v. Gulf Farms*, 28 Agric. Dec. 612 (1969). Complainant appears to have obtained a PACA license on December 18, 2006 (License No. 20070258), but this date was *after* Complainant's alleged transactions with R&R.

Based on Complainant's self-dealing and fraudulent and unlawful actions, the fact that R&R and Rey Rey SFO have fully paid for all produce, the fact that Complainant did not hold a valid PACA license, and the fact there was no contractual privity between Complainant and R&R or Rey Rey SFO, Complainant cannot be permitted to maintain this action. For the foregoing reasons and authorities , R&R respectfully requests that this matter be dismissed and that no further action be taken against R&R.

Thank you for your attention to this matter. Please feel free to contact me with any further questions or comments.

Very truly yours,

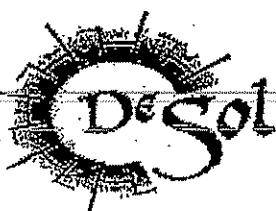
RYNN & JANOWSKY, LLP



BART M. BOTTA

/BMB  
07-104/Answer to Informal Complaint

cc: Client



11/9/2006

COMMISSION STATEMENT

As per our verbal agreement Dated August 2005, Rey Rey Los Angeles, Inc should pay weekly \$5000.00 for comision to Desol Imports or Ivan Alvaro for imports goods (mexican specialties and mexican persian lines) to Rey Rey Los Angeles and Rey Rey San Francisco.

1	Weekly	August	2005	01-06	5,000.00
2		August	2005	08-13	5,000.00
3		August	2005	15-20	5,000.00
4		August	2005	22-27	5,000.00
5		August	2005	29-03	5,000.00
6		September	2005	05-10	5,000.00
7		September	2005	12-17	5,000.00
8		September	2005	19-24	5,000.00
9		September	2005	26-01	5,000.00
10		October	2005	03-08	5,000.00
11		October	2005	10-15	5,000.00
12		October	2005	17-22	5,000.00
13		October	2005	24-29	5,000.00
14		November	2005	31-05	5,000.00
15		November	2005	07-12	5,000.00
16		November	2005	14-19	5,000.00
17		November	2005	21-26	5,000.00
18		November	2005	28-03	5,000.00
19		December	2005	05-10	5,000.00
20		December	2005	12-17	5,000.00
21		December	2005	19-24	5,000.00
22		December	2005	26-31	5,000.00
23		January	2006	02-07	5,000.00
24		January	2006	09-14	5,000.00
25		January	2006	16-21	5,000.00
26		January	2006	23-28	5,000.00
27		February	2006	30-04	5,000.00
28		February	2006	06-11	5,000.00
29		February	2006	13-18	5,000.00
30		February	2006	20-25	5,000.00
31		March	2006	27-04	5,000.00
32		March	2006	06-11	5,000.00
33		March	2006	13-18	5,000.00
34		March	2006	20-25	5,000.00
35		March	2006	27-01	5,000.00
36		April	2006	03-08	5,000.00

EXHIBIT I

NO. 024 P. 4

37	April	2006	10-16	5,000.00
38	April	2006	17-22	5,000.00
39	April	2006	27-29	5,000.00
40	May	2006	01-05	5,000.00
41	May	2006	08-13	5,000.00
42	May	2006	15-20	5,000.00
43	May	2006	22-27	5,000.00
44	May	2006	29-03	5,000.00
45	June	2006	05-10	5,000.00
46	June	2006	12-17	5,000.00
47	June	2006	19-24	5,000.00
48	June	2006	26-01	5,000.00
49	July	2006	03-08	5,000.00
50	July	2006	10-15	5,000.00
51	July	2006	17-22	5,000.00
52	July	2006	24-29	5,000.00
53	August	2006	31-05	5,000.00
54	August	2006	07-12	5,000.00
55	August	2006	14-19	5,000.00
56	August	2006	21-26	5,000.00
57	August	2006	28-02	5,000.00
58	September	2006	04-09	5,000.00
59	September	2006	11-16	5,000.00
60	September	2006	18-23	5,000.00
61	September	2006	25-30	5,000.00
62	October	2006	02-07	5,000.00
63	October	2006	09-14	5,000.00
64	October	2006	16-21	5,000.00
65	October	2006	23-28	5,000.00
66	November	2006	30-04	5,000.00
67	November	2006	06-11	5,000.00
68	November	2006	13-18	5,000.00
69	November	2006	20-25	5,000.00
70	November	2006	27-02	5,000.00
71	December	2006	04-09	5,000.00
72	December	2006	11-16	5,000.00
73	December	2006	18-23	5,000.00
74	December	2006	25-30	5,000.00

  
 Manuel Reynoso C.E.O.  
 Rev Rey Inc.

RightFAX

11/29/2004 2:36 PAGE 007/009 Fax Server

Nov. 16, 2004 5:30PM

Manuel I. Reynoso

Nov. 5, 2004 2:58PM

No. 4600 P. 2

No. 4489 P. 7

213-1425

p. 1

19. Plaintiff shall, upon full payment of all sums due under this  
2 Agreement and Stipulation, provide Defendants with a conformed copy of the  
3 request for dismissal of this action, in its entirety, with prejudice.

4 IT IS SO STIPULATED:

5 G. W. PALMER & CO., INC.  
6

7 DATED: 11/16/04

8 By:

*Lindall Woodward*  
Name: Lindall Woodward  
Position: Produce Sales

9 REY & REY PRODUCE, INC.

10 DATED: 11/16/04

11 By:

*JR*  
MANUEL REYNOSO, President

12 MANUEL REYNOSO, Individually

13 DATED: 11/16/04

14 By:

*MR*  
MANUEL REYNOSO

15 APPROVED AS TO FORM AND CONTENT:

16 RYNN & JANOWSKY, LLP

17 DATED: 11-18-04

18 By:

*BMB*  
BART M. BOTTA, Attorneys for Plaintiff

02/07/2006 12:47 FAX 213955803

006/014

Feb. 1, 2006 4:04PM

No. 8172 P. 6

17. For all of these reasons, I believe entry of judgment against Defendant is  
both proper and justified.

I declare under penalty of perjury under the laws of the State of California, and the United States of America that the foregoing is true and correct.

Executed this 8<sup>th</sup> day of February, 2006 at Los Angeles, California.

MANUEL REYNOSO

LEAH JURRIES  
RYAN & JARONSKY  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660  
(714) 752-2111  
FAX: (714) 752-0053

02/07/2008 12:49 FAX 2139558087

010/014

Feb. 1, 2006 4:06PM

No. 8172 P. 10

1           The perishable agricultural commodities listed on this invoice  
 2           are sold subject to the statutory trust authorized by section 5(c)  
 3           of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.  
 4           §499e(c)). The seller of these commodities retains a trust claim  
 5           over these commodities, all inventories of food or other products  
 6           derived from these commodities and any receivables or proceeds  
 7           from the sale of these commodities until full payment is received.

8           See again, true and correct copies of Plaintiff's invoices attached hereto and incorporated  
 9           herein by reference as Group Exhibit 1.

10          14. All the invoice amounts due were reviewed and authorized by me. After  
 11         the complaint was filed, no payments have been received. Therefore, the principal  
 12         amount currently owed by Defendants to Plaintiff is \$8,316.80.

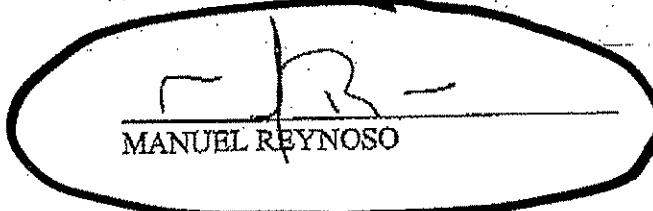
13          15. Pre-judgment finance charges at the rate of 18% per annum has been  
 14         calculated on the principal amount due from the date each invoice became due and owing  
 15         through March 15, 2006 (motion for default judgment hearing) in the amount of  
 16         \$2,006.80. An itemized spreadsheet calculating the finance charges is attached hereto as  
 17         Exhibit 3.

18          16. Based on the foregoing, I believe Plaintiff is entitled to default judgment  
 19         against Defendants in the principal amount of \$8,316.80 plus prejudgment finance  
 20         charges in the amount of \$2,006.80 and attorneys fees and costs in the amount of \$866.37  
 21         for a total current amount due of \$11,189.97, and post judgment finance charges at the  
 22         rate of 18% per annum.

23          17. For all of these reasons, I believe entry of judgment against Defendants is  
 24         both proper and justified.

25          I declare under penalty of perjury under the laws of the State of California, and the  
 26         United States of America that the foregoing is true and correct.

27          Executed this 8<sup>th</sup> day of February, 2006 at Los Angeles, California.



MANUEL REYNOSO

03/21/2008 13:41 FAX 213955807

005/007

Mar. 20, 2006 3:22PM

No. 8697 P. 5

1        The perishable agricultural commodities listed on this invoice  
 2        are sold subject to the statutory trust authorized by section 5(c)  
 3        of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.  
 4        §499e(c)). The seller of these commodities retains a trust claim  
 5        over these commodities, all inventories of food or other products  
 6        derived from these commodities and any receivables or proceeds  
 7        from the sale of these commodities until full payment is received.

8        See again, true and correct copies of Plaintiff's invoices attached hereto and incorporated  
 9        herein by reference as Group Exhibit 1.

10      14. All the invoice amounts due were reviewed and authorized by me. After  
 11     the complaint was filed, no payments have been received. Therefore, the principal  
 12     amount currently owed by Defendant to Plaintiff is \$26,042.50.

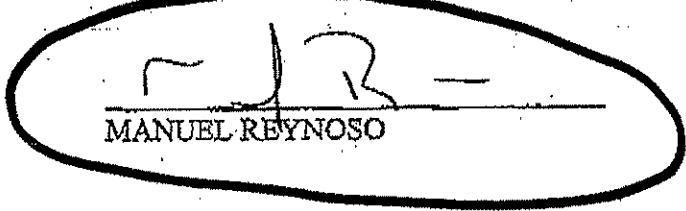
13      15. Pre-judgment finance charges at the rate of 18% per annum has been  
 14     calculated on the principal amount due from the date each invoice became due and owing  
 15     through April 28, 2006 (motion for default judgment hearing) in the amount of  
 16     \$4,487.82. An itemized spreadsheet calculating the finance charges is attached hereto as  
 17     Exhibit 3.

18      16. Based on the foregoing, I believe Plaintiff is entitled to default judgment  
 19     against Defendant in the principal amount of \$26,042.50 plus prejudgment finance  
 20     charges in the amount of \$4,487.82 and attorneys fees and costs in the amount of  
 21     \$2,183.93 for a total current amount due of \$32,714.25, and post judgment finance  
 22     charges at the rate of 18% per annum.

23      17. For all of these reasons; I believe entry of judgment against Defendant is  
 24     both proper and justified.

25      I declare under penalty of perjury under the laws of the State of California, and the  
 26     United States of America that the foregoing is true and correct.

27      Executed this \_\_\_\_ day of March, 2006 at Los Angeles, California.



MANUEL REYNOSO

LAW OFFICES  
RYNN & JANOWSKY  
4180 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CALIFORNIA 92660-2428  
(714) 752-2511  
FAX (714) 752-0853

17. For all of these reasons, I believe entry of judgment against Defendant is  
both proper and justified.

I declare under penalty of perjury under the laws of the State of California, and the United States of America that the foregoing is true and correct.

VI Executed this \_\_\_\_ day of May, 2006 at Los Angeles, California.

MANUEL REYNOSO

**RYNNE, ANTHONY**  
4106 NEWPORT BEACH DRIVE  
SUITE 706  
NEWPORT BEACH, CALIFORNIA 92660-2423  
SBN 0-91252014-1

RECEIVED  
3474

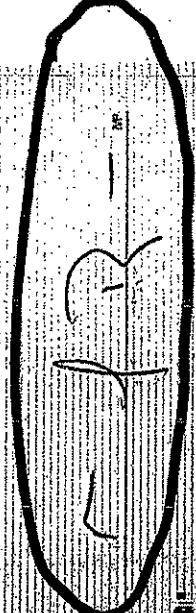
WELLS FARGO BANK,  
N.A.  
SAN FRANCISCO, CALIFORNIA

11/28/2007

PRODUCE IN  
P.O. BOX 21485 LOS ANGELES, CA 90021  
(213) 955-8056/(213) 955-8087

PAY TO THE  
ORDER OF  
Rynn & Janowsky LLP

Two Thousand and ~~00~~/100

DOLLARS 

\$ \*\*2,000.00

RYNN & JANOWSKY LLP  
4100 NEWPORT PLACE DRIVE  
SUITE 700  
NEWPORT BEACH, CA 92660

MEMO

100-11214-51